



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/057,040 | 01/25/2002 | Michael L. Myrick | 16139/09002-CON | 5497 |

7590 07/31/2003

Lloyd G. Farr
Nelson Mullins Riley & Scarborough, LLP
1330 Lady Street
P.O. Box 11070
Columbia, SC 29211

EXAMINER

SEDIGHIAN, REZA

ART UNIT

PAPER NUMBER

2633

DATE MAILED: 07/31/2003

5

Please find below and/or attached an Office communication concerning this application or proceeding.

27

Office Action Summary

Application No.

10/057,040

Applicant(s)

MYRICK, MICHAEL L. 

Examiner

M. R. Sedighian

Art Unit

2633

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-3 is/are allowed.
- 6) ☒ Claim(s) 4 and 6 is/are rejected.
- 7) ☒ Claim(s) 5 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4</u> . | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 2633

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claim 6, it recites the limitation "said wavelength spectrum" in line 9. There is insufficient antecedent basis for this limitation in the claim.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Digonnet et al. (US patent No: 4,938,556).

Regarding claim 4, Digonnet teaches a light source in an optical spectroscopy system (col. 12, lines 41-63), a method of compensating for a change in light signal (col. 23, lines 62-67, col. 24, lines 1-10), comprising the steps of : providing a light source that outputs a light signal having a wavelength spectrum (col. 23, lines 62-63, col. 24, line 60); identifying a relationship between change in the wavelength spectrum (col. 24, lines 62-64) and an average wavelength spectrum of the light source (col. 24, lines 17-28). Digonnet differs from the claimed invention in that Digonnet does not specifically disclose modifying the wavelength spectrum based on the identified relationship. Digonnet discloses appropriately selecting the variation of wavelength

with respect to temperature (col. 24, lines 6-7) and a directional relationship between the average wavelength and the emission wavelength of a light source (col. 24, lines 20-25). Therefore, it would have been obvious to an artisan at the time of invention that an optical transmission system such as the one of Dignonnet can provide variation for the light source emission spectrum with respect to an average wavelength spectrum to further compensate or to reduce the temperature dependence of the light source.

5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zawaideh (US patent No: 5,889,592).

Regarding claim 6, Zawaideh teaches a light source (15, fig. 1) in an optical spectroscopy system (col. 3, lines 10-25), a method of compensating for change in a light signal (15, fig. 1), comprising the steps of: applying a light signal from the light source (15, fig. 1) to a measurement sample (13, 14, fig. 1), wherein the entire wavelength range of the light signal applied to the sample (col. 2, lines 51-55 and fig. 5), defining a relationship between change in spectral shape over the wavelength spectrum and change in input power to the light source (col. 4, lines 9-31). Zawaideh differs from the claimed invention in that Zawaideh does not specifically disclose modifying the input power to the light source based on the defined relationship to compensate for the change. Zawaideh teaches a controller 17 that can control the light source 15 (col. 3, lines 22-25). Zawaideh further discloses using the concept of relative shift (ratio) of power spectral density as a function of incident angle (col. 4, lines 9-11). Therefore, it would have been obvious to an artisan at the time of invention that a controller such as the one of

Art Unit: 2633

Zawaideh can provide a control signal to the light source to modify the input power of the light source in order to detect and measure different parameters.

6. Claim 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

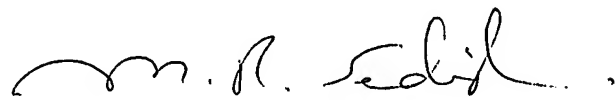
7. Claims 1-3 are allowed over prior art of record.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. R. Sedighian whose telephone number is (703) 308-9063.

The examiner can normally be reached on M-F (from 9 AM to 5 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Chan can be reached on (703) 305-4729. The fax phone numbers for the organization where this application or proceeding is assigned is (703) 872-9314.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.


M.R. SEDIGHIAN
Patent Examiner
Art Unit: 2633